

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF CRANSTON

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:
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v.

C.A. No. T12-0029

JERRY DORSEY

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
12 JUN 26 PM 12: 05

DECISION

PER CURIAM: Before this Panel on May 23, 2012—Magistrate Noonan (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Goulart, sitting—is Jerry Dorsey’s (Appellant) appeal from a decision of Administrative Magistrate Cruise (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-15-12, “Interval between vehicles.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 26, 2012, Officer Reese of the Cranston Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on April 24, 2012.

At the trial, Officer Reese stated that he was on a fixed traffic post on Mill Street and Park Avenue in Cranston. Officer Reese observed a car traveling at a high rate of speed headed eastbound on Park Avenue. Officer Reese activated his emergency lights and attempted to pursue the speeding vehicle. Before pulling out onto Park Avenue, Officer Reese noticed a vehicle traveling approximately one car length behind the speeding vehicle. (Tr. at 2.) Officer Reese pulled out to pursue the speeding vehicle and the operator of the trailing car was forced to stop abruptly because it was following the speeding car so closely. Officer Reese subsequently

stopped both vehicles. Officer Reese identified the Appellant as the operator of the vehicle that was close behind the speeding vehicle. Officer Reese cited the Appellant for traveling too close.

Appellant then testified on his own behalf and testified similarly to Officer Reese. However, Appellant maintained that he was more than one car length away from the car in front of him; however, Appellant could not estimate how much distance was between him and the vehicle in front of him. (Tr. at 2.)

After both parties presented their evidence, the trial magistrate issued his decision sustaining the charged violation. In sustaining the violation, the trial magistrate recounted the aforementioned facts. The trial magistrate also adopted Officer Reese's testimony as his findings of fact to sustain the violation. (Tr. at 3.)

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;

- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate abused his discretion. Specifically, Appellant contends that the trial magistrate erred in crediting the testimony of Officer Reese over the Appellant's testimony.

In Link, our Supreme Court made clear that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of Officer Reese or Appellant, it would be

impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [Officer Reese and Appellant.]” Environmental Scientific Corp., 621 A.2d at 206. The trial magistrate listened to the witnesses and determined what to accept and disregard, and what to believe and disbelieve. See id.

Here, Appellant argues that the trial magistrate committed error when he chose to accept the testimony of the Officer Reese over the Appellant’s. However, Appellant’s arguments relate to questions of fact that were heard and weighed by the trial magistrate at Appellant’s trial. This Panel’s review is limited to determining whether the trial magistrate made an error in law or misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel’s review is limited in scope). Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion. The trial magistrate’s decision sustaining the charged violation is supported by legally competent evidence—Officer Reese’s testimony—which the trial magistrate chose to credit over the Appellant’s.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision was not an abuse of discretion or affected by other error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.